# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 21448 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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**NENDRASINH ATTARSINH TOMAR (RAJPUT) - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR. AMRISH PANDYA for MS KRISHNA U MISHRA for Petitioner(s) : 1,
MR. L.R. PUJARI, AGP, for Respondent(s)

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 20/12/2005**

**ORAL JUDGMENT**

1. Narendrasinh Attarsinh Tomar (Rajput) has filed this petition under Article 226 of the Constitution of India challenging the detention order dated 2.10.2005 passed by respondent No. 2 i.e. Police Commissioner, Ahmedabad, under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 being illegal, invalid, arbitrary and in violation of the provisions of Articles 14, 19, 21 and 22 of the Constitution of India. The said petition was filed on 15.10.2005. On 24.10.2005 this Court issued rule returnable after four weeks.

2. On behalf of the respondents Mr. L.R. Pujari, learned AGP, appears. Therefore, with the

consent of the parties the matter has been taken for final disposal.

3. Learned counsel Mr. Pandya for the petitioner has invited my attention to the order of detention dated 2.10.2005 and the order dated 2.10.2005 wherein the petitioner has been sent to Surat jail on the same day. He has also invited my attention to the grounds of detention furnished by the authority in which it is stated that the petitioner has committed an offence under the provisions of the Bombay Prohibition Act, 1951. It was alleged that the petitioner was keeping 600 litres of liquor worth Rs. 40,000/- and one mobile of Nokia Company valued at Rs. 2500/-. The learned counsel for the petitioner stated that in this case the order of detention cannot be passed because there is no violation of law and order. He has submitted that there is a solitary incident and the authority could not have passed order because he is is not habitually committing offence. For that he has relied on the decision of the Hon'ble Supreme Court in the case of DARPAN KUMAR SHARMA VS. STATE OF TAMIL NADU reported in AIR 2003 SC 971.

4. On behalf of the respondents Mr. L.R. Pujari, learned AGP appears. He filed an affidavit of K.R. Kaushik, Commissioner of Police for the city of Ahmedabad. It has been stated that the activities of petitioner fall within the definition of “boot-letter” and the authority considered the material

placed before the authority including the papers pertaining to the above case and after applying the mind to the facts of the case the authority came to the conclusion after subjectively satisfying that the detenu is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of anti-social and boot-letting activities may cause grave or wide-spread danger to life, property and public health.

5. I have considered the submissions made in this behalf. In view of the judgement of the Hon'ble Apex Court in the case of DARPAN KUMAR SHARMA VS. STATE OF TAMIL NADU reported in AIR 2003 SC 971 the petition is required to be allowed. There is no proper satisfaction arrived at by the authority. The authority has not considered the material aspect. The material aspect which has been set out is not adequate to pass the detention order.

6. In view of the above, in the result, the petition is allowed. The impugned order of detention dated 2.10.2005 passed by the Police Commissioner, Ahmedabad City, is quashed and set aside. The petitioner-Narendrasinh Attarsinh Tomar (Rajput) is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M. MEHTA, J)

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